

STATE OF THE JUDICIARY
January 17, 2007
by Chief Justice Edward L. Chávez

Governor Richardson, Lt. Governor Denish, Senate Pro Tem Altamirano, Speaker Lujan, distinguished members of the Legislature, fellow judges, employees of the judiciary, other special guests, family and friends:

It is a distinct privilege to address a joint session of the New Mexico State Legislature. Please accept my unfeigned appreciation for your invitation to speak about the state of the judiciary and to highlight for you, how together we may further our shared vision of a judiciary that is more accountable, more accessible and more efficient.

I want to extend a special welcome to the new legislators and other newly elected officials. Thank you for joining us in service to the people of the land of enchantment. We in the judiciary look forward to working with you and all of the legislators during this 48th legislative session. I can say with unhesitating confidence that we, meaning, the executive, legislative and judicial branches of government are committed to working collaboratively, yet separately, to provide the people of the great State of New Mexico with a responsible and accountable government that is fair, just, and committed to the welfare of all its citizens.

I would like to introduce to you my wife, Sandra. Sandra, thank you for your support and for helping me keep a proper balance between, faith, family and community.

I have been blessed with the opportunity to work with Justices whom I respect immensely - Justice Pamela Minzner, Justice Patricio Serna, Justice Petra Jimenez-Maes, and

Justice Richard Bosson, who just concluded a successful term as Chief Justice, displaying extraordinary leadership. I want to thank them for entrusting me with the duties and responsibilities of Chief Justice. I will do my best to honor the position and to advance the important work of the judiciary. I will not shrink from the responsibility because I know that each Justice, the Chief Judges Council and the extremely competent team at the Administrative Office of the Courts, will help me fulfill my responsibilities.

Many of our judges are in attendance to pay their respects to both the legislative and executive branches of government. Would you kindly join me in thanking all of our judges, including our *pro tem* judges, as I ask those who could be here today, to please stand and be recognized. Congratulations to the justices and judges on the remarkable contributions you have made to the legal and democratic traditions of our State. Thank you for your wisdom and sound judgment in the interpretation of our laws; for your courage in the face of controversy and criticism; and for your integrity in the pursuit of justice. I am proud to be counted among you.

Of course, we judges could not meet our constitutional responsibilities without the hard work of all of our Judiciary employees. On behalf of the Supreme Court and all of the judges, I extend our wholehearted gratitude to each and every one of our Judiciary employees for their indefatigable commitment to administering justice efficiently and fairly. This year, second only to adequate base budgets, our ambitious but lean unified budget, makes staff salaries a priority. With the LFC recommended five percent staff salary

increase, we ask you to again entrust us with the discretion to provide merit based salary increases and move our judicial employees through their respective salary ranges. The court's multi tier review procedure assures objective application of performance criteria and the low employee vacancy rate is testament to its effectiveness. With the discretion you entrusted us with last year, meeting all target pay rates in the judiciary is now within reach.

I want to alert you to a personnel change at the Administrative Office of the Courts. Many of you know Gina Maestas who served as the Director of the AOC for the last four years. Gina decided to go back home, so to speak, to work as the Clerk of the Court of Appeals, where she worked for many years as a staff attorney. On behalf of the courts, I want to thank Gina for her dedicated work. While we will miss her work at the AOC, we are pleased that she remains a member of the judiciary family.

It is also important to mention that while we searched for an attorney to succeed Ms. Maestas, Jeff Varela graciously agreed to assume the responsibilities of Acting Director, and he did an exemplary job. He continues to serve New Mexico as Deputy Director of AOC. Thank you Mr. Varela for your dedicated work and unselfish contributions to the judiciary.

It is now my pleasure to introduce the new Director of the AOC, Artie Pepin. Mr. Pepin has quickly earned the respect of the chief judges around the state, and for good reason. Not only is he an accomplished attorney, having supervised the Criminal Appellate Division at the Attorney General's Office, he steadfastly follows his compass in life - truth. I know he will foster the positive working relationship we enjoy with the legislative and

executive branches of Government.

Months before joining the AOC, Mr. Pepin became a model for professionalism and prosecutorial integrity. In a case which has received much press because it involved the prosecution of a former judge, Mr. Pepin alerted the Supreme Court to an issue not previously raised by any attorney in the case, including the defendant's attorney: whether the Legislature excluded judges from prosecution under the Governmental Conduct Act.

Like issues in many other cases, the issue raised by Mr. Pepin was a test - a test of judicial independence. The test is whether courts can fairly and impartially construe a statute when faced with a controversial issue? Can courts resist all temptations to rewrite legislation to avoid public criticism?

Construing statutes is a daily function of the courts. By applying cardinal rules of statutory construction, by disciplining ourselves never to question the wisdom of the legislation, our search is for legislative intent. Judicial independence requires judges to uphold the constitution and laws based on their own reading of the laws, unconstrained by political fear, fear for physical safety or other undue pressures, and uninfluenced by the status of the parties.

This concept of judicial independence - that judges should decide cases, faithful to the law, without fear or favor, remains one of the fundamental cornerstones of our democracy. This independence is not for the benefit of judges, it is for all of us; we the people. We the people are the intended beneficiaries of the fair and impartial administration

of justice.

Although legislators consider public opinion and the views of special interest groups when drafting laws, it is never appropriate for judges to do so when deciding cases. In this respect, the judiciary is very different from the other two branches of government. Judges must be accountable exclusively to the Constitution and the law—not public pressure.

I am not saying that courts should be immune from criticism. On the contrary, I firmly believe that the destruction of our democracy begins with the suppression of free speech. Our democracy is galvanized when citizens comment, favorably or unfavorably, about how they perceive government is protecting their individual liberties and interests. And yes, like checks on legislative and executive power, it is important to have checks on judicial power.

One effective check on judicial power is the Rule of Law. Our country was blessed when we inherited a culture of obedience to the Rule of Law. Unlike a monarchy where the King is the law, in our democracy - the law is King. Independent courts follow the rule of law, assuring predictability and stability in the application of our laws.

Another effective check is the very genius of our democracy; the checks and balances among the three branches of government. If the legislature disagrees with the way a court has applied or interpreted a law, or if an unintended consequence results from application of the law as written, the legislature has authority to amend the law and prospectively change the impact of the court decision. This is yet another appropriate and effective check on

judicial power.

We may see what I have described as the genius of our democracy at work during this legislative session. I understand Governor Richardson may ask you to revisit the wisdom of excluding Judges from the Governmental Conduct Act. Although it would not be appropriate for me to comment on proposed legislation - since I may someday be called upon to construe the legislation - I use this as an example of how our democracy permits equal branches of Government to work independently, yet be accountable to each other in a manner that is constructive and void of hostility.

Accountability is an important topic because many of our funding requests directly impact judicial accountability. The Judicial Standards Commission, a constitutionally established investigative body, reviews complaints against judges and recommends discipline. In the case I previously discussed, the defendant judge was suspended as soon as the Supreme Court was alerted by the Commission that the judge was under investigation for criminal wrongdoing. Months before the judge was indicted he was suspended without pay and has not been on the bench since. This is one illustration of how vital the Judicial Standards Commission is to judicial accountability, and why it deserves adequate funding.

Another vital component of judicial accountability is the evaluation of judges, to improve performance, and to provide the public with credible and objective information regarding judges seeking retention. The independent Judicial Performance Evaluation Commission, made up of seven lawyers and eight non-lawyers, performs this function by

conducting rigorous, objective and closely monitored evaluations of judges. We urge you to grant the funding request of the Commission so that we can continue to improve the quality of our judges in New Mexico.

Performance measures are also key to judicial oversight and accountability. Our unified budget includes a summary of the clearance rates for each court - cases disposed of as a percentage of cases filed. I am pleased to report that, with the addition of the judges approved by the legislature and signed by Governor Richardson, our average clearance rate has improved and hovers around 98%. This impressive clearance rate exists despite an increase in civil filings, more trials, and a growing population of self-represented litigants who exact greater time demands from our courts.

Our therapeutic courts exceed national performance measures by substantial percentages. Nationally 73% of drug court participants do not re-offend. In New Mexico 87% do not re-offend. And in New Mexico we graduate over 60% of the participants compared to a 47% national average. When our therapeutic courts perform at this level the public fisc is safeguarded. Compare the \$23 daily cost per drug court participant to the \$81 daily cost of incarceration. Perhaps more important, therapeutic courts help the non-violent drug offender successfully break free from the addiction of drugs or alcohol, so that, rather than becoming a repeat offender, they become productive citizens. With sufficient recurring funds we can successfully implement our five-year strategic plan to have a drug court in every district.

As we strive to provide people with their day in court, the goal of an efficient judiciary must also be to ensure that a day in court does not turn into weeks, months or years of litigation. This afternoon at Chief Judges Council we will consider supplementing performance measures with time to disposition measures. We are mindful that justice which is not affordable - or justice which is delayed - is justice denied.

Education is another key component of oversight and accountability. As you know the vast majority of our judges in Magistrate and Municipal court are not lawyers. They have not taken the difficult bar exam to verify their understanding of laws and procedure. Through our Judicial Education Committee we provide extensive training to these judges before they assume the bench. I am proud to report that under the leadership of Magistrate Steve Jones, President of the Magistrate Judges Association, we have begun testing Magistrates and each new Magistrate has a volunteer mentor to guide them as they serve the people of New Mexico.

The testing is not intended to disqualify judges from their elected positions. The intent is threefold. One, to measure the effectiveness of our training. Two, as assurance that the judges are prepared to assume the important responsibilities of a judge. Three, to identify weaknesses so that the mentors can focus on areas requiring added attention and education.

We will build on this pilot-testing program and will test the municipal court judges, which they also welcome. We ask for four full-time positions at the AOC to allow us to

provide greater oversight of our Municipal courts. Without a doubt, like other trial judges, judges in the courts of limited jurisdiction play a vital role as ambassadors of the judiciary. They have the most contact with the public. Public experience with these courts dictates how the entire judiciary is perceived. These judges work hard and they care. We must do our part to assure these dedicated public servants that they are prepared to serve the people of New Mexico.

Regarding access to courts, let me address three subjects. First, buildings. Second, the critical needs of the poor. Third, the importance of all citizens participating in the jury system.

We are making progress building new magistrate court facilities and remodeling others. Construction is underway in Espanola. In Las Cruces, we have expedited the design phase so that we can break ground soon. In Lovington, Gallup and Bernalillo we are working with landlords to make necessary changes to those facilities. Next year we will work on the courts in Mora, Ruidoso and Los Alamos. We support the facilities fund approach recommended by the LFC because the approach will assure annual funds for equipment and increased security in our Magistrate courts while honoring our Metropolitan Court bond obligation.

District Court construction continues in Los Lunas and Las Vegas, and the voters in Santa Fe approved construction of a District Court. We are also excited about the Court of Appeals Annex at the University of New Mexico. The University has already donated land

next to the law school for the Annex. Not only will this Annex provide much needed space for the court, the educational partnership with the University will be the first in the nation. The plans are complete and with adequate funding, construction can begin in August. Consistent with our commitment to oversight and accountability, we are asking for legislation that creates a Court of Appeals Annex Building Commission to oversee the building of the Annex and its operations.

Yet, while bricks and mortar are essential, access to justice is more about making sure people from all walks of life have the benefits and protections of our justice system. Unfortunately, the inadequacy of federal funding for civil legal service programs means that in New Mexico low-income families do not have equal access to justice.

Last year, in its final report to the Supreme Court, the Commission on Access to Justice presented data, which continues to demonstrate a severe shortage of civil legal assistance to low-income New Mexicans. These are families of four who earn less than \$25,000 a year. The Commission estimates that less than 20% of the legal needs of low-income families are being met - less than 20%. These families are unable to secure legal representation to obtain food, healthcare, and shelter - basic human needs. Nor are low-income victims of domestic violence able to obtain representation in civil proceedings.

To address this grave problem the Supreme Court is assuming oversight of a plan to increase voluntary representation of low-income families. We are considering rules changes to encourage volunteer services and we ask that you fund a full time employee at AOC to

help us aggressively implement a *pro bono* plan and improve self-representation. Although we are committed to doing our part, a *pro bono* plan will not solve the problem. It is estimated that each legal problem facing a low-income family costs \$438. To service the estimated 18,000 unmet needs annually, legal aid providers need \$8 million. State funding of the Civil Legal Services Commission is essential to assure equal access to justice.

Equal access to justice also requires us to enable all citizens to meaningfully participate in our jury system. Our constitution appropriately demands it because “justice” is a community project. The community participates directly in this project when they serve as jurors. It is in our jury system that citizens announce the standard of care they demand in their communities. They decide the guilt or innocence of an accused and are entrusted with the heavy burden of deciding whether a defendant, found guilty of capital murder, should be sentenced to death.

Because of these powers and responsibilities, juries should truly reflect the diversity of our communities. Whether rich, poor, educated, uneducated, a professional, a laborer, a citizen over the age of eighteen, can and must participate in our civil and criminal justice system. To make sure our entire community participates in this community project we call “Justice” we provide interpreters for non-English speaking jurors. We must increase compensation for interpreters or risk losing interpreters to the federal courts and other states which pay them much more. Without interpreters we fail in our constitutional responsibility to enable non-English speaking citizens to serve as jurors.

Justice is now accessible in a variety of media thanks to modern technology. We live in an era of rapid change in technology and must be prepared to adapt and utilize these advances. For years our courts have utilized a case management system to help the work of judges, and to facilitate court procedures. The judiciary, attorneys, litigants, and the public have all benefitted from this system. It provides the most reliable data in New Mexico regarding DWI convictions. Habitual offender information - so critical to public safety - is available on-line. The executive branch and other employers rely on this system for pre-employment screening and the public has free case look-up capability.

Unfortunately our system is three years beyond its useful life and is not supported by the vendor. There is a substantial risk of catastrophic failure, which would shut down our courts statewide. The employer and public benefits I previously described would be lost. Our courts would return to a 1977 capability with 2007 caseloads.

We are preparing to prevent this risk of catastrophic failure. With last year's funding our highly competent Judicial Information Division developed a proof of concept which confirmed that the purchase of a customized off-the-shelf case management system is the most prudent course of action. We are conducting site visits of those companies who responded to a request for information, putting their very products to the test under a carefully designed test protocol. We are visiting user sites to get the users perspective regarding vendor support and the quality and utility of the products we are investigating. With adequate funding we can purchase, install and begin training on an essential statewide

case management system.

With the legislatively authorized Electronic Document Management System, started in the second judicial district, we can avoid exorbitant document storage costs by scanning documents to electronic files. Importantly we will move closer to electronic filing, supported by the business and legal communities for reasons of economy and efficiency.

Additionally, by allocating general funds to pay the existing Judicial Information Division lease and compensate its employees, we can use Supreme Court Automation Funds, derived from filing fees, to maintain our automation systems and expand video arraignments to district courts. Unquestionably video arraignments save transportation expense, minimize human resources and virtually eliminate security risks. With responsible use of automation funds we can continue to serve the public with deliberate speed and efficiency, expanding access to the courts beyond the courthouse walls.

The state of the judiciary is advancing. Although we have accomplished much in recent years, now is not the time to rest on our laurels. Efficiency does not have a fixed destination. Together, we - the executive, legislative, and judicial branches - share the same goal. We all want to provide excellent customer service to the people of New Mexico. This requires us to meet the challenges of a changing society, as we have done with our therapeutic courts, mediation programs, supervised visitation programs, and video arraignments. The people of New Mexico deserve excellent customer service. They demand it. And we will do all we can in the Judiciary to provide it.

When we present our budget to the Legislature, we will be asking that you provide our bench and our court staff the tools to be accountable, the tools to be accessible, and the tools to be efficient.

Thank you.